

Case Summary

Alan J. Lape (“Husband”) appeals and Debra R. Lape (“Wife”) cross-appeals from the dissolution decree terminating their marriage. We affirm in part, reverse in part, and remand with instructions.

Issues

Husband raises six issues, which we consolidate and restate as follows:

- I. Whether the trial court erred in determining the contents of the marital estate;
- II. Whether the trial court abused its discretion in valuing certain marital assets; and
- III. Whether the trial court abused its discretion in determining that he failed to rebut the presumption that an equal distribution of the marital estate was just and reasonable.

Wife raises the following two restated issues:

- IV. Whether the trial court abused its discretion in valuing the 2006 net corn crop proceeds; and
- V. Whether the trial court abused its discretion in determining that she failed to rebut the presumption that an equal distribution of the marital estate was just and reasonable.

Facts and Procedural History

Husband and Wife were married on December 31, 1992. Husband was in the farming business, and Wife worked as a medical assistant. After their child was born on August 10, 1994, they agreed that Wife should stay at home full-time.

On or about December 20, 2006, the parties separated. On December 28, 2006, Wife petitioned to dissolve the marriage. On March, 21, 2008, the trial court issued a dissolution decree, which contains the following finding of facts and conclusions thereon:

9. Finding that the parties' decision to become engaged in [H]usband's famil[y's] farming operation as a fulltime career move for them was a joint decision, with the understanding [H]usband would be engaged in the farming operation and [W]ife would support the same by maintaining the family home and be caregiver for the parties' minor son. The assets acquired as a part of his farming venture are joint assets subject to division. For purposes of valuation of assets, the date of separation is the date the court should use.

10. That the majority of the assets of the parties are in the form of real property and farm equipment and that [H]usband has controlled the same for the production of income during the pendency of the marriage.

11. Finding that [H]usband after the decree of dissolution is entered ... will continue his occupation as a farmer and that [H]usband by his own testimony acknowledge[d] that 2007 was his best year relating to earnings in farming.

12. Finding that [H]usband had purchased but had financed the majority of a one-third interest in certain real property just before the marriage using proceeds of assets he had acquired prior to the marriage to finance this initial buy in. Thereafter the purchase price of said real estate was paid during the marriage and is included in the marital pot subject to the division of the Court, reduced by the value of [H]usband's use of assets acquired prior to marriage. For valuation purposes the [C]ourt finds Husband's use of premarital assets is \$116,292.00 as determined from [H]usband's exhibit #1, without which the parties would not have been able to acquire the assets they owned at the time of separation.

13. That [W]ife had no access to marital property during the period of separation and requested the liquidation of certain marital assets, pre-dissolution liquidation of the same or a pre-dissolution buy-out by [H]usband of certain assets in order to establish a business during the pendency of this dissolution and parties were unable to reach an agreement in this regard. Wife thereafter liquidated her IRA and incurred a taxable event in order to move forward in her business venture. She borrowed additional sums from an acquaintance which the [C]ourt finds irrelevant to these proceedings.

14. That [H]usband failed to present any credible evidence that he is indebted to his brother for a purported loan made at the time the parties bought into the family business. Payment of \$71,558.78 made to David Lape in January 2007 from the 2006 crop proceeds should be added back into the marital pot. The [H]usband did present credible evidence of indebtedness owed to his parents over the course of the marriage and the balances due and amounts paid should be considered valid obligations of the marriage.

....

16. That the parties were the owners of certain farm machinery having a value to the parties of \$283,392.00, subject to a lien in favor of ONB in the amount of \$62,061.00 and JD Farm equipment in the amount of \$20,733.00, leaving net equity in said equipment at \$200,558.00.

....

19. Finding that the parties further had at the time of separat[ion] in the Lape [Brothers'] account the sum \$31,133.00; National City Bank account the sum of \$1,009.00; Health Savings Account \$407.00; Lape Farm account \$4,168.00; Husband's checking account \$5,761.00; [W]ife's checking account \$7,786.00. Wife was in control of \$7,786.00 and Husband was in control of \$67,478.00. Husband further received proceeds from the sale of the 2006 corn crop in the amount of \$99,141.00, plus a payment to David Lape in the amount of \$71,558.78 which the court has found was not due and owing for a total of \$170,699.78. Said crop proceeds have a tax determination associated with it in the amount of 19.5% and should be reduced thereby to \$137,413.32.

....

21. Finding that both parties acknowledge that [W]ife had a drinking problem during a portion of the marriage which strained the relationship and may have been relevant in a custody dispute there was no evidence that the same caused a dissipation of the assets or significantly hindered [H]usband's earning capacity.

....

The Court having entered said Findings of Fact now makes the following CONCLUSIONS OF LAW:

....

2. That per IC 31-15-7-4 and 5 the Court is to presume that an equal division of the marital property between the parties is just and reasonable. This is a rebuttable presumption, wherein the Court may consider the economic circumstances of each spouse, the earning ability of the parties and the conduct of the parties during the marriage, and the [C]ourt having made those considerations can find no evidence to support the deviation from the presumptive 50/50 split and denies both parties['] request for it to do so.

....

4. Wife shall have set over to her the following assets and be responsible for the following debts, hold [H]usband harmless for said indebtedness and indemnify him for the same:

Covington House	\$ 79,000.00
Traditional IRA-[W]ife's name	\$ 10,068.00
Traditional IRA-[H]usband's name	\$ 52,512.00
Life Ins./National City	\$ 59,706.00
Misc. Personal Property	\$ 7,500.00
Checking Account	\$ 7,786.00
Covington House Mortgage	(74,914.00)
Gold Mastercard	(<u>4,865.00</u>)

NET TOTAL ASSETS AND DEBTS TO WIFE	\$137,793.00
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5. Husband shall have set over to him the following assets and be responsible for the following debts, hold [W]ife harmless for said indebtedness and indemnify her for the same:

1/3 Interest in Real Estate known as:

JDA Farm	\$98,900.00
Warren Farm	\$69,800.00
JDAL Farm	\$116,600.00

1/2 Interest in Real Estate known as:

Hanner Farm	\$66,800.00
Sand Farm	\$140,250.00
Twin Creeks	\$119,457.00

Twin Creeks House	\$43,947.00
Farm Equipment	\$200,558.00
1992 Toyota Landcruiser	\$2,000.00
2002 Ford F-350	\$9,333.00
2002 Suburban	\$11,000.00
Misc. Personal Property	\$22,500.00
4 wheeler/ranger/waverunner	\$11,000.00
Roth IRA	\$90,637.00
Cash/Bank Accounts-all other[s]	\$67,478.00
2006 net crop proceeds	\$137,413.32
ONB Farm Equipment Loan	(\$62,061.00)
JD Farm Equipment	(\$20,733.00)
Taxes	(\$39,065.00)
Twin Creek Improvements	(\$15,942.00)
Premarital contribution	(\$116,292.00)
Twin Creek Farms	(\$89,382.00)
Jake and Pat Lape	(\$133,964.00)
Phillips lumber	(\$7,874.00)
Appraisals	(\$4,850.00)
Husband's Credit Card	<u>(\$8,309.00)</u>

NET TOTAL ASSETS
AND DEBTS TO HUSBAND \$ 709,201.00

6. In order to effectuate the Court's order of an equal division of assets and debts, the Court finds that [H]usband should pay to [W]ife two hundred eighty five thousand seven hundred four dollars (\$285,704.00). Husband is entitled to offset this amount by the eighty-one thousand nine hundred fifteen dollars (\$81,915.00) paid to [W]ife per the parties['] provisional agreement, which reduces the sum owed to the [W]ife to two hundred thousand seven hundred eighty nine dollars (\$203,789.00) [sic].

Appellant's App. at 6-11. Husband filed a motion to correct error, which the trial court denied. Husband appeals, and Wife cross-appeals.

Discussion and Decision

At the outset, we note that the trial court issued findings of facts and conclusions thereon pursuant to Indiana Trial Rule 52(A). In such cases, we apply the following two-tiered standard of review: first, we determine whether the evidence supports the findings, and second, we assess whether the findings support the judgment. *Clark v. Crowe*, 778 N.E.2d 835, 839 (Ind. Ct. App. 2002). Findings of fact are clearly erroneous when the record lacks any evidence or reasonable inferences from the evidence to support them. *Granzow v. Granzow*, 855 N.E.2d 680, 683 (Ind. Ct. App. 2006). “To determine whether the findings or judgment are clearly erroneous, we consider only the evidence favorable to the judgment and all reasonable inferences flowing therefrom, and we will not reweigh the evidence or assess witness credibility.” *Id.*

I. Contents of Marital Estate

Husband asserts that the trial court erred in including certain items in the marital estate. In reviewing his claims, we observe that it is well established that all marital property goes into the marital pot for division, whether it was owned by either spouse before the marriage, acquired by either spouse after the marriage and before final separation of the parties, or acquired by their joint efforts. Ind. Code § 31-15-7-4(a); *Beard v. Beard*, 758 N.E.2d 1019, 1025 (Ind. Ct. App. 2001), *trans. denied* (2002). With two exceptions not applicable here, “final separation” means “the date of filing of the petition for dissolution of marriage.” Ind. Code § 31-9-2-46. This “one-pot” theory ensures that all assets are subject to the trial court’s power to divide and award. *Thompson v. Thompson*, 811 N.E.2d 888, 914

(Ind. Ct. App. 2004), *trans. denied* (2005). “While the trial court may ultimately determine that a particular asset should be awarded solely to one spouse, it must first include the asset in its consideration of the marital estate to be divided.” *Hill v. Hill*, 863 N.E.2d 456, 460 (Ind. Ct. App. 2007).

A. Inclusion of Husband’s \$25,000 Withdrawal

In Finding 19, the trial court made various findings regarding the parties’ bank accounts and cash. Specifically, it found that Husband’s checking account had \$5,761 and that Husband was in control of \$67,478. The latter figure includes Husband’s withdrawal of \$25,000 from the parties’ joint bank account shortly before December 28, 2006, the date the dissolution petition was filed. The trial court’s order on Husband’s motion to correct error explains,

The court notes [that] in his motion [H]usband refers [to] the [C]ourt’s 19th factual finding, the error in what purports to be the parties’ various bank accounts. The [C]ourt recognizes the confusion in that finding as it failed to acknowledge the \$25,000.00 withdrawn by [H]usband from the parties’ joint account two days prior to the filing of the dissolution. The [C]ourt reduced the \$25,000 by the \$10,000 withdrawn by [W]ife in the weeks leading up to the filing and therefore found that the \$15,000.00 together with the other accounts [H]usband had control over totaled \$67,478.00.

Appellant’s App. at 13.

Husband argues that the trial court erred by including the \$25,000 in determining the amount of money over which he had control at the time the dissolution petition was filed. However, Husband admits that shortly before Wife filed the dissolution petition, he closed the parties’ joint bank account and opened a new account with the sum of \$25,000.

Appellant's Br. at 23.¹ Based on the record before us, we may reasonably assume that Husband had possession of the money on the date the dissolution petition was filed. Moreover, we observe that the trial court offset the \$25,000 that Husband withdrew by the \$10,000 that Wife withdrew. The trial court thus treated the parties fairly and equitably. Accordingly, we cannot say that the trial court erred in considering the \$25,000 to determine the amount of money under Husband's control.² *But see Thompson*, 811 N.E.2d at 915 (affirming trial court where it excluded \$7000 from marital estate, although wife admitted that she withdrew \$7000 just days before dissolution petition was filed, husband failed to assert that wife still had possession of the money when final dissolution decree was issued, and therefore the money was not subject to a claim of improper division of marital assets).

B. Husband's Payment to Brother

Husband contends that the trial court erred in its treatment of his January 2007 payment of \$71,558.78 to his brother, David Lape. In Finding 14, the trial court found that Husband failed to present credible evidence that he was indebted to his brother and determined that the \$71,558.78 payment to David should be "added back" into the marital

¹ Husband states that he withdrew the \$25,000 on about December 15, 2006, but he does not directly challenge the trial court's finding that he withdrew the money two days before the dissolution petition was filed. Appellant's Br. at 23.

² Husband contends that the trial court abused its discretion in setting the date of the parties' physical separation as the date of valuation. *See Trackwell v. Trackwell*, 740 N.E.2d 582, 585 (Ind. Ct. App. 2000) (concluding that trial court abused its discretion by selecting date of parties' physical separation for purposes of valuing marital assets rather than a date between the filing of dissolution petition and final hearing), *trans. dismissed* (2001). While Husband may be correct in this regard, it does not affect the trial court's valuation of Husband's checking account. He concedes that the trial court accurately valued his account. Appellant's Br. at 23.

pot. Appellant's App. at 7-8. The trial court then added this figure to Husband's 2006 corn crop proceeds of \$99,140.00, for a total of \$170,699.78.

Husband does not contend that the trial court erred in finding that he was not indebted to his brother. Instead, he argues that the trial court erred in adding the \$71,558.78 payment to the crop proceeds. Husband contends that "[n]o evidence exists that [he] paid the \$71,558.78 from a balance of \$170,699.78. This sum never existed. Adding \$71,558.78 to \$99,140.00 puts approximately \$43,976 that also never existed in the marital pot." Appellant's Reply Br. at 5. We agree. Essentially, Husband's payment to his brother was not removed from the marital pot in the first place, and therefore did not need to be "added back" into the marital pot. In reaching this conclusion, we emphasize that the trial court valued the Lapes' bank accounts before either the crop proceeds were deposited or the payment to David was deducted from Husband's bank account.³ Accordingly, the trial court erred in adding the \$71,558.78 to the \$99,140.00 in crop proceeds in Finding 19. However, the parties also dispute whether the crop proceeds should be further reduced by its associated tax liability. We therefore turn to the valuation of marital assets.

II. Valuation of Marital Assets

Husband challenges the trial court's valuations of the 2006 corn crop proceeds, farm equipment, and his premarital assets. The trial court has broad discretion in valuing marital

³ Another way to understand the error is to consider how the trial court would have treated Husband's payment to David if it had found that Husband's debt was legitimate. In that event, the \$71,558.78 would have been deducted from the \$99,140.00, and only \$27,581.22 in crop proceeds would have been left to include in the marital pot. Indeed, the trial court treated the debt to Husband's parents in such a manner. Appellant's App. at 11. Therefore, because the trial court found that the payment was illegitimate, it simply should not have included it at all in the marital estate.

assets, and its valuation will not be disturbed absent an abuse of that discretion. *Leonard v. Leonard*, 877 N.E.2d 896, 900 (Ind. Ct. App. 2007). Where the trial court's valuation of property is within the range of values supported by the evidence, the court does not abuse its discretion. *Sanjari v. Sanjari*, 755 N.E.2d 1186, 1191 (Ind. Ct. App. 2001). When determining the date upon which to value the marital assets, the trial court may select any date between the date of filing the dissolution petition and the date of the final hearing. *Deckard v. Deckard*, 841 N.E.2d 194, 200 (Ind. Ct. App. 2006) (citing *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996)).

A. 2006 Crop Proceeds

In Finding 19, the trial court found that the corn crop proceeds had an associated tax liability of 19.5%. Husband argues that the trial court failed to account for the full amount of tax liability. Wife counters that the trial court erred in considering any tax liability associated with the crop proceeds.

Both parties cite Indiana Code Section 31-15-7-7, which provides, "The court, in determining what is just and reasonable in dividing property under this chapter, shall consider the tax consequences of the property disposition with respect to the present and future economic circumstances of each party." The statute was first addressed in *Harlan v. Harlan*, 544 N.E.2d 553 (Ind. Ct App. 1989), *aff'd*, 560 N.E.2d 1246 (Ind. 1990). There, the husband, Hal, owned a substantial number of shares in Harlan, Sprague, Dawley, Inc., ("HSD"). In distributing the marital estate, the trial court required Hal to pay the wife, Joyce, approximately \$430,000 in cash. The trial court found that Hal could not pay Joyce's share

of the estate with a lump sum payment without selling some assets. Accordingly, the trial court ordered Hal to pay Joyce over a period of 180 months. Nevertheless, in calculating the value of Hal's stock, the trial court deducted the tax liability that Hal would incur *if* all his stock were sold. Joyce appealed, arguing that the statute, then codified at 31-1-11.5-11.1, contemplated only tax consequences that result from the property division. The *Harlan* court reviewed the case law that existed before the statute was enacted and concluded,

The thrust of the Statute is to recognize that there may be in the plan of division of marital property certain tax consequences which should be taken into account. The clear inference is that only tax consequences necessarily arising from the plan of distribution are to be taken into account, not speculative possibilities. The Statute specifically limits the trial court to consider only the tax consequences "of the property disposition."

Id. at 555. The *Harlan* court then concluded that the trial court had abused its discretion in deducting Hal's tax liability from the value of his stocks. *Id.* at 555.

Husband asserts that *Harlan* is inapplicable because it involved shares of stock, whereas this case involves farm products. We agree. Here, the crops are part of an ongoing business operation and are, in effect, working capital. The value of the crops as part of the ongoing farming business cannot be accurately valued without considering the effect of taxes on their value. As Husband points out, the crops will be taxed whether they are sold or held as inventory. Our review of the record reveals that the evidence supports the trial court's tax rate of 19.5%. Appellant's App. at 20. Accordingly, we conclude that the trial court did not abuse its discretion in applying a 19.5% tax rate to value the 2006 corn crop proceeds. We have already determined that the proper gross value of the 2006 corn proceeds is \$99,140.00

rather than \$170,699.78. Thus, applying the 19.5% tax rate results in 2006 net crop proceeds of \$79,807.70.

B. Farm Equipment

In Finding 16, the trial court found that the parties were owners of farm machinery worth \$283,392. Apparently, the parties own a fractional interest in the farm machinery. Some of the equipment is owned by Lape Farms Equipment, of which the parties own an undivided one-third interest. Other equipment is owned by Lape Brothers, of which the parties own an undivided one-half interest. The trial court calculated the \$283,392 value by considering the parties' fractional interest in the equipment. However, Husband contends that the trial court erred in failing to consider that the fractional interests should be discounted to reflect the fair market price of the farm equipment. We disagree. The trial court's valuation is supported by the farm equipment appraisal conducted by Randy Allen. Appellant's App. at 63-65. Husband argument is merely an invitation to reweigh the evidence, which we must decline. Accordingly, we cannot say that the trial court abused its discretion.

C. Husband's Premarital Assets

According to Finding 12, Husband purchased "certain real property" just before the marriage. Appellant's App. at 16. The trial court included the purchase price of the property in the marital pot because the property was paid for during the marriage. The trial court reduced the purchase price by the value of the Husband's premarital assets. Specifically,

Husband asserts that the trial court abused its discretion in valuing his premarital assets at \$116,292, arguing that there is no evidence in the record to support it.

Finding 12 indicates that the trial court relied on Husband's Exhibit 1. Although Exhibit 1 might not appear to support the trial court's figure at first glance, this is so only because it erroneously lists Husband's net worth as \$248,530. Appellant's App. at 16. The correct value is \$248,542.⁴ When we subtract the value of the properties Husband purchased just before the marriage (\$132,250), we arrive at \$116,292.⁵ Accordingly, we find no abuse of discretion here.

III. Distribution of Marital Estate

An equal division of marital property is presumed to be just and reasonable. Ind. Code § 31-15-7-5.

However, this presumption may be rebutted by a party who presents relevant evidence, including evidence concerning the following factors, that an equal division would not be just and reasonable:

(1) The contribution of each spouse to the acquisition of the property, regardless of whether the contribution was income producing.

⁴ While Exhibit 1 shows the value of Husband's current assets (\$102,311) and his intermediate assets (\$171,491), it does not show a value for total fixed assets and total assets. Husband's fixed assets refers to the present value of the property then owned by Husband as shown in Schedule A ($\$77,000 + \$55,250 = \$132,250$). When we add all categories of assets together to determine total assets, we arrive at \$406,052 ($\$102,311 + \$171,491 + \$132,250$). We then subtract the value of Husband's total liabilities (\$157,510) from his total assets to arrive at \$248,542.

⁵ In his reply brief, Husband asserts that if the trial court intended to subtract the value of both properties listed in Exhibit 1 ($\$77,000 + \$55,250 = \$132,250$), the court's intention was contrary to the evidence. Appellant's Reply Br. at 6. Husband, however, has failed to present a cogent argument. Indiana Appellate Rule 46(A)(8)(a) requires that the appellant's argument "contain the contentions of the appellant on the issues presented, supported by cogent reasoning." "A party generally waives any issue for which it fails to develop a cogent argument or support with adequate citation to authority and portions of the record." *Romine v. Gagle*, 782 N.E.2d 369, 386 (Ind. Ct. App. 2003), *trans. denied*. Therefore, Husband has waived this issue.

- (2) The extent to which the property was acquired by each spouse:
 - (A) before the marriage; or
 - (B) through inheritance or gift.
- (3) The economic circumstances of each spouse at the time the disposition of the property is to become effective, including the desirability of awarding the family residence or the right to dwell in the family residence for such periods as the court considers just to the spouse having custody of any children.
- (4) The conduct of the parties during the marriage as related to the disposition or dissipation of their property.
- (5) The earnings or earning ability of the parties as related to:
 - (A) a final division of property; and
 - (B) a final determination of the property rights of the parties.

Id.

“The division of marital assets is a matter within the sound discretion of the trial court.” *England v. England*, 865 N.E.2d 644, 648 (Ind. Ct. App. 2007), *trans. denied*. A party who challenges the trial court’s division of marital property must overcome a strong presumption that the court considered and complied with the applicable statute. *In re Marriage of Bartley*, 712 N.E.2d 537, 542 (Ind. Ct. App. 1999). When we review a claim that the trial court improperly divided marital property, we must decide whether the trial court’s decision constitutes an abuse of discretion, considering only the evidence most favorable to the trial court’s disposition of the property, without reweighing the evidence or assessing the credibility of witnesses. *Hill*, 863 N.E.2d at 462-63. An abuse of discretion occurs if the trial court’s decision is clearly against the logic and effect of the facts and circumstances before the court or if the trial court has misinterpreted the law or disregarded evidence of factors listed in the controlling statute. *Id.* Although the facts and reasonable inferences might allow for a different conclusion, we will not substitute our judgment for that of the trial court. *Helm v. Helm*, 873 N.E.2d 83, 89 (Ind. Ct. App. 2007).

The trial court found that there was no evidence to support a deviation from the presumptive 50/50 split. Husband and Wife both contend that the trial court abused its discretion in finding that each failed to rebut the presumption. Specifically, Husband argues that the contribution of his premarital assets to the creation of the marital estate, the parties' economic circumstances and earning abilities, and Wife's alcoholism support a deviation from an equal division in his favor. Wife counters that the evidence shows she should be awarded a greater percentage of the marital estate.

The trial court found the following: (1) by agreement of the parties, Wife stopped working outside the home so that she could care for the home, Husband, and child; (2) the parties jointly decided to enter into the farming business, with Husband to focus on the business and Wife to focus on care of the home and child; (3) Husband will continue farming, and 2007 was his best year yet; (4) Husband's premarital assets were used to finance the initial purchase of certain property, but the remaining purchase price was paid for during the marriage; (5) during the dissolution proceedings, Wife had to liquidate her IRA, thereby incurring a taxable event, to start her new business; (6) both parties acknowledged that Wife had a drinking problem, but it did not cause a dissipation of the assets or significantly hinder Husband's earning capacity. These findings show that the trial court carefully considered all the factors enunciated in Indiana Code Section 31-15-7-5. The arguments presented by both Husband and Wife are merely invitations to reweigh the evidence, which we may not do. Accordingly, we conclude that the trial court did not abuse its discretion in declining to deviate from an equal division of the marital estate.

Conclusion

We affirm the trial court's consideration of \$25,000 in determining the amount of money over which Husband had control. We affirm the trial court's valuation of the farm equipment and Husband's premarital assets. We affirm the trial court's equal division of the marital estate. We reverse the addition of \$71,558.78 to the crop proceeds of \$99,140.00 in Finding 19. We affirm the crop proceeds tax liability of 19.5% and apply this to \$99,140.00 to find net crop proceeds of \$79,807.70. That figure must be inserted as the 2006 net crop proceeds in Conclusion 6, which yields net total assets and debts to Husband of \$651,595.38. That brings the total marital estate to \$789,388.38. An equal distribution will be achieved by the distribution of \$394,694.19 to each party. To accomplish this, Husband must pay Wife a total of \$256,901.19. This sum is reduced by Husband's payments (\$81,915.00) to Wife pursuant to their provisional agreement to \$174,986.19. Therefore, we reverse the portions of Conclusion 6 that conflict with this opinion and remand to revise the dissolution decree consistent with this opinion.

Affirmed in part, reversed in part, and remanded.

ROBB, J., and BROWN, J., concur.